

## MEETING MINUTES CITY OF MILPITAS

**Minutes of:** Regular Meeting of Milpitas City Council  
**Date:** Tuesday, September 4, 2018  
**Time:** 5:30 PM Closed Session  
7:00 PM Open Session  
**Location:** Council Chambers, Milpitas City Hall,  
455 East Calaveras Blvd., Milpitas

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### CALL TO ORDER

Mayor Tran called the meeting to order at 5:32 PM. City Clerk Mary Lavelle called the roll.

**PRESENT:** Mayor Tran, Councilmembers Barbadillo and Phan

**ABSENT:** Vice Mayor Grilli and Councilmember Nuñez were absent at roll call. They both arrived in the Closed Session.

### CLOSED SESSION

City Council convened in Closed Session to discuss litigation and matters listed on the agenda.

### ANNOUNCEMENT

City Attorney Chris Diaz stated that there was no reportable action out of Closed Session, and that Council would reconvene in Closed Session later in the evening.

Council then convened for the Open Session regular agenda at 7:42 PM.

### PLEDGE

Boy Scouts Troop No. 92 presented the flags and led the pledge of allegiance.

### INVOCATION

Councilmember Nuñez asked for a moment of silence to be observed in memory of recently deceased Senator John McCain of Arizona.

### PRESENTATIONS

Mayor Tran presented the following:

- Proclaimed September as *National Preparedness Month*, recognizing the local Office of Emergency Services office, Emergency Preparedness Commission, SAFE teams, and other civic organizations. Accepted by Toni Charlop, Emergency Services Coordinator.
- Recognized Milpitas North Valley Bobby Sox League, recognizing many girls who played softball in the league over the summer. Vice Mayor Marsha Grilli presented certificates to the leaders and coaches of Bobby Sox, which has been in Milpitas for more than 60 years.

### PUBLIC FORUM

Robert Marini, resident, spoke about compliance with the California Public Records Act, and his prior request to City Attorney.

Michael Tsai, resident, spoke to the Council about housing and lack of affordable housing which put pressure on working families. He referred to Palo Alto and Los Gatos and housing plans.

Councilmember Nuñez asked the City Manager about the County Board of Supervisors which passed a resolution allowing Measure A funds on school district land. The local Superintendent favored partnering with the City for housing for school and possibly City employees. The City Manager responded that she could put this on the next joint meeting agenda for discussion.

Albert Alcorn, stated he was Chair of Telecommunications Commission and was initially appointed by Mayor Henry Manayan. He opposed the new name of the former Telecommunications Commission. He addressed the main purpose of the Commission and the complex technology systems of City government. Support of the Information Services Department should be the primary role of the Commission. He had suggestions for an alternate name.

Councilmember Nuñez thanked Mr. Alcorn for his active role on the Commission. He asked staff for a timeline of workplans that would return to City Council.

Councilmember Barbadillo respected the members of the Telecommunications Commission and the invaluable work of that group. He suggested this topic come back to the City Council, possibly with a more appropriate name and list of scope and work of the Commission.

Councilmember Phan responded that he was open to all thoughts at this time.

Voltaire Montemayor, resident, voiced encouragement for the City, house rentals were very hard, living paycheck to paycheck. He was prepared himself and for his family for an emergency. Milpitas would be known and celebrated with a parade one day.

Frank DeSmidt invited all to the September 28 Casino Night by Milpitas Chamber of Commerce; and to Milpitas Rotary Club's October 5 dinner at Ta Restaurant for "Know a Vet" fundraiser.

## **ANNOUNCEMENTS**

None

## **ANNOUNCEMENT OF CONFLICT OF INTEREST AND CAMPAIGN CONTRIBUTIONS**

City Attorney Diaz asked Councilmembers if they had any personal conflicts of interest or reportable campaign contributions. None were reported.

## **APPROVAL OF AGENDA**

Motion: to approve the meeting agenda, as submitted

Vice Mayor Grilli asked to hear agenda item no. 18 prior to no. 17 and the Mayor agreed.

Motion/Second: Councilmember Phan/Councilmember Nuñez

Motion carried by a vote of: AYES: 5  
NOES: 0

## **CONSENT CALENDAR**

Mayor Tran requested items no. 1 through no. 14 to be on the consent calendar.

Councilmember Phan asked to remove item no. 8 from consent.

Motion: to approve the Consent Calendar including agenda items numbered 1-14, excepting items no. 1 and no. 8

Motion/Second: Vice Mayor Grilli/Councilmember Nuñez

Motion carried by a vote of: AYES: 5  
NOES: 0

### **1. Council Calendar**

Regarding the September Council Calendar, Councilmember Nuñez reported that he was not available to join a special meeting on Saturday, September 15 since he would be out of town. He asked if the City Manager could poll Councilmembers for another possible date, and she agreed to do so.

Motion: to accept the City Council calendar for September 2018, deleting a special meeting on September 15, 2018

Motion/Second: Councilmember Nuñez/Vice Mayor Grilli

Motion carried by a vote of: AYES: 5  
NOES: 0

### **\* 2. Meeting Minutes**

Approved City Council meeting minutes of August 21, 2018.

- Motion/Second: Vice Mayor Grilli/Councilmember Phan
- Motion carried by a vote of: AYES: 5  
NOES: 0

SmartLevel sewer monitoring system units for an amount not to exceed \$168,357 through December 31, 2023.

\*14. Amendment to Agreement with BB&K

Approved and authorized the City Manager to execute Amendment No. 4 to the agreement with Best Best & Krieger LLP (BBK) to provide City Attorney services for the period of September 1 to September 30, 2018.

## PUBLIC HEARING

### 15. Fee Deferral Request

Senior Planner Michael Fossati explained the request from Lyon development regarding “The District” for a site development permit amendment, related to fees to be paid to the City per the Transit Area Specific Plan (TASP). Specifically, the developer requested to amend two particular Conditions of Approval for the payment of TASP fees. The amount of the fee was approximately \$7,000,000 and a representative from Lyon was present to express the company’s request to defer certain payments.

Mayor Tran opened the public hearing for any speakers.

Voltaire Montemayor, resident, said this was all refinement of sites and all good.

A woman asked why the developer wanted to make installment payments.

Mr. Fossati responded to her, stating cost overruns and carrying costs of the project, labor and materials costs, which have risen substantially, and tariff uncertainties all contributed to the request from Lyon to the City.

(1) Motion: to close the public hearing, following two speakers

Motion/Second:

Vice Mayor Grilli/Councilmember Nuñez

Motion carried by a vote of:

AYES: 5

NOES: 0

Mayor Tran expressed that he was opposed to this request, and it was important to the City to collect all the fees that were due.

Councilmember Nuñez wanted to understand further about the reduction in commercial square footage. He asked if some type of finance fee or other cost would be added to the total, if the request was approved, and staff replied no. Mr. Nuñez questioned if this was something that was likely to occur with other projects asking for changed terms. He had reviewed the public benefits of the project and felt some of those were not as firm as when first approved by a prior Council. He sought more benefits, such as a child care facility on site.

Councilmember Barbadillo asked about the four subareas of the TASP for The District by Lyons. He asked planning staff about agreements reached, and staff said there only Conditions of Approval not a development agreement. Staff reported that Lyon was currently building The District 2 with no significant changes. Mr. Barbadillo mentioned the CIP and planning budget for that project. Public benefits for such a large development, he felt, should be memorialized on any fee deferrals. A bike share plan should be prioritized and mentioned funding for one fire vehicle. The City needed to make sure funds go where required so the CIP was not affected. It was necessary to ensure all public benefits were realized.

Vice Mayor Grilli agreed that this was a signature project and was important to be completed and not take any longer than 24 months. She’d like community benefits to be more geared to disadvantaged students in the community, through the City’s recreation programs.

Councilmember Phan first welcomed the City’s new Planning Director Ned Thomas to the City. Regarding all proposed community benefits, Mr. Phan asked if those came from Lyon, and staff

said yes in 2015. He suggested laying out any unfunded CIP projects, as prioritized, and then to ask a developer to fund some of those as public benefits when negotiating with developers.

Councilmember Nuñez asked if it was possible to leave it to staff to come back to Council with more clarity on the public benefits specifically on that site.

Mayor Tran said in 2014 that Lyon was active in the election here in City of Milpitas. And, he wanted to know from staff if there were any campaign contributions made at that time.

(2) Motion: to adopt Resolution No. 8817 approving a Site Development Permit Amendment of Resolution No. 8511, allowing modification of Transit Area Specific Plan fee payment schedule

And included in the motion for the proposed public benefits to be left for staff to bring back to the Council, after getting those more precise and specific.

Motion/Second: Councilmember Nuñez/Councilmember Phan

Motion carried by a vote of: AYES: 5  
NOES: 0

## **NEW BUSINESS**

### **16. Census report**

Planning Manager Jessica Garner introduced County Counsel staff Marcelo Quinones about plans for the 2020 US Census in Santa Clara County, which had a team working on this. He referred to the “LUCA” Local Update of the Census Addresses, wherein 6500 addresses were added in Santa Clara County. He said it was complex to try to identify the estimated federal funding impact of any undercount.

Mayor Tran asked him to explain the GIS coordinates he’d referred to.

Councilmember Phan asked about timeline for outreach efforts. Mr. Quinones talked about the launch for outreach that would occur later this month. Mr. Phan further asked about money allocated for these efforts and funding from the federal government to the city and if those were from CDBG funds. The County staff said it could be many programs in all areas. Mr. Phan expressed his understanding of community concerns about the citizenship question, and wondered if the USCIS would have access to the data gathered.

Councilmember Nuñez admired a County Supervisor’s remarks on the US census so far. He wanted to ensure that government would get the money it was entitled to receive. He asked the City Manager what City department would be working with the county to ensure success. Ms. Edmonds-Mares responded that an interdepartmental team would be necessary on the Census, for outreach, educational materials and getting trusted community partners.

Mayor Tran thanked Mr. Quinones for his presentation and no vote was taken on this item.

### **17. Aircraft Noise Roundtable**

Deputy City Manager Steve McHarris discussed the Cities Association recommendation to form a Santa Cruz/Santa Clara County Aircraft Noise Roundtable. He defined north flow and south flow and described “Next Gen” GPS technology for US air traffic. Mr. McHarris displayed for the City Council four discussion points on this proposal with some drawbacks to joining, and also provided a three-part recommendation from staff to City Council (as on the agenda).

Councilmember Nuñez commented on the cities listed that were affected by south flow of airplane noise. Milpitas was used as a permanent entry point to the South Bay, so noise could have an impact. He supported recommendation no. 2 on the staff’s list.

Vice Mayor Grilli thanked Councilmember Nuñez for attending all those meetings and bringing back information to the Council.

Councilmember Barbadillo asked how many cities were considered to make up the Roundtable. If the FAA decision came after 2.5 years, it would turn around and make its decision known.

The City Manager asked Mr. McHarris to explain what the City of San Jose did on this issue.

Mayor Tran invited speakers next.

Andi Jordan, staff from the Cities Association of Santa Clara County, corrected some information that had been presented. Her group's effort was separate and not related to the City of San Jose's on the airport roundtable. The Cities Association wanted to work with FAA, and it required working with a regional group only. She referred to the estimated cost on displays (\$39,000) and explained why the cost would be lower than expected. Her Association expected to hire staff to work on a model for this roundtable.

Voltaire Montemayor, resident, liked flying and sat in the co-pilots seats, talked about the direction of the wind, and impacts on aircraft. He was concerned for more accidents.

Councilmember Nuñez appreciated the position of the Cities Association. He saw an article about this similar issue in Orange County, recently, and supported recommendation no. 2 as best for the citizens of Milpitas.

Mayor Tran asked staff to review the three recommendations. Mr. McHarris displayed the slide with the list of recommendations. The Mayor said he put his faith in the FAA and did not want to vote to join the Roundtable.

Councilmember Nuñez felt a need to protect our City, with regard to moving flight patterns for noise. He supported only no. 2 because the others would put Milpitas in a bad position.

Mayor Tran said he did not want to "rush this thing" at this meeting, as he saw a disadvantage for Milpitas. He asked to consider representation on the proposed body of this type.

Councilmember Phan thanked staff for the report. There was a need to have a body with representatives from different municipalities. Proportional representation could be a good idea versus, e.g., ABAG. He said to work with the congressional representative along with Milpitas and other cities, and supported the recommendation to Council.

Vice Mayor Grilli thanked Mr. Nuñez and staff for on working on this issue. She wanted to see the City of Fremont be included in this roundtable.

Motion:

- 1) To defer consideration of joining the Santa Clara/Santa Cruz Airport Roundtable being formed by the Cities of Association of Santa Clara County until the FAA has responded to the recommendations of the Airport Ad Hoc Advisory Committee on South Flow Arrivals.
- 2) To adopt the position that future participation in the Santa Clara/Santa Cruz Airport Noise Roundtable be conditioned on the following changes to the governance and structure of the body:
  - a. Proportional representation based on population for member jurisdictions;
  - b. Recommendations from the Roundtable require a 2/3 majority to ensure consensus;
  - c. Amending the bylaws of the Roundtable so that no recommendations will be made that would only result in shifting noise to another community; and
  - d. Extend offer of Roundtable voting membership to Alameda County and City of Fremont
- 3) To authorize the City Manager to send a letter communicating the above recommendation items to the Cities Association of Santa Clara County.

Motion/Second: Councilmember Nuñez/Councilmember Barbadillo

Motion carried by a vote of: AYES: 4  
NOES: 0  
ABSTAIN: 1 (Tran)

## AGREEMENT

**18. Sport Center/Snack Shack update** This item was heard prior to agenda item no. 17.

Recreation Services Director Renee Lorentzen addressed the status of the Milpitas Sports Center Skate Park and Snack Shack Restroom Building, Project No. 5111. She provided history and status of the skate park. She displayed the final concept design from earlier this year, as designed by the consultant architect Mike Hiddleston of Verde Design, who came forward to provide many details.

City Engineer Steve Erickson described the work and plan for improvements including the upgrade to the Snack Shack at the Sports Center. A modular new restroom facility was analyzed and was recommended by staff, at similar cost to rehabbing the existing building. \$4.5 million was the estimated cost to build both snack shack, and skate park and facilities.

Councilmember Nuñez asked Ms. Lorentzen why there was no recommendation from the Parks, Recreation and Cultural Resources Commission on the design for the Skate Park. She replied that the snack shack was not ready for staff to have brought to the Commission and its design was especially code driven.

Councilmember Phan empathized with some concerns mentioned, but those should have been brought up when the project was approved a year ago.

Mayor Tran was happy there was a water fountain on site. He asked about a half pipe, since he did not see one on the drawing. Mr. Hiddleston described where a half pipe was included in the design, with a very contemporary style.

Next, the Mayor invited comments from the audience.

Martha Lamdin, resident and advocate for a skate park, noted that this topic was proposed in 2012 when her junior high son wrote a letter to the City requesting to build one. Kids needed safe places to skate in Milpitas. As to the snack shack, it was run down even 20 years ago, so it was really necessary to be upgraded and she supported the staff proposal, with excitement.

Jim Bates, resident, noted it had been a long time coming for the skate park. Notions about who or what skaters were are unfounded, and those opposed had the wrong impression.

Ms. Hammer, a life long resident, was an in-line skater and tried to attend several of the public meetings. It was good to teach skating lessons to kids and she saw a lack of a beginning area for skaters. She commented about the figure-8 space, where shade was needed. Lighting in the skate park was necessary, too.

A woman had attended public meetings held on the skate park. She had mentioned lighting and shade elements at the meetings but did not see those incorporated into the plans.

Voltaire Montemayor, resident and PRCRC alternate member, respected how the group voted. He supported the new skate park for enjoyment, perhaps with music. He was in favor.

Mayor Tran asked the Recreation Director to make sure there could be beginner hours at the skate park. Staff would consider the programming for all users, and work some of the comments made at this meeting into the final design.

Mr. Hiddleston felt there were going to be some shade structures. He commented on the trees in the design and that it would take several years before they matured and provided much shade.

Mayor Tran wanted to be sure skaters closed up and put away their wheels once the lighting was turned off.

Councilmember Barbadillo would support the staff recommendation, even though in the past he was not initially supportive, especially concerning safety. He defended the PRCRC and its members, who were volunteers and he had changed his mind set about skateboarding.

Councilmember Nuñez had questions to staff about the recommendation to approve the conceptual design. He did not see the program in the recommendation and asked staff to clarify what specifically would be approved. Mr. Lorentzen clarified that the final design would come back to the City Council.

Motion:

1. To approve the conceptual designs for the Sports Center Skate Park, and snack shack and restroom building at the Milpitas Sports Center Complex; and
2. To approve and authorize the City Manager to execute Amendment No. 2 to the Agreement with Verde Design, Inc. to increase compensation not to exceed \$46,000 for additional design services for the Sports Center Skate Park, Project No. 5111.

Motion/Second:

Vice Mayor Grilli/Councilmember Nuñez

Motion carried by vote of:

AYES: 5

NOES: 0

**REPORTS FROM MAYOR  
& COUNCIL**

Vice Mayor Grilli noted for the record that neither she nor Garry Barbadillo had accepted any money from Lyon in 2014 campaign donations, in response to the Mayor's inquiry earlier in the meeting.

**CLOSED SESSION, cont'd**

At 11:40 PM, the public business on the agenda for this meeting was concluded and the City Council then returned to Closed Session.

Upon exiting the Closed Session, the City Attorney made no announcement out of Closed Session, as there was no reportable action taken by the City Council.

**ADJOURNMENT**

The meeting was adjourned at 12:04 AM on Wednesday, September 5, 2018.

**The foregoing minutes were approved by Milpitas City Council on September 18, 2018.**

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**Mary Lavelle**  
**Milpitas City Clerk**